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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 HEATHER GLENNON,) CASE NO. CV 01-08559 (RZ)
12 Plaintiff,)
13 vs.) MEMORANDUM OPINION
14 MICHAEL J. ASTRUE, Commissioner) AND ORDER
15 of Social Security Administration,)
16 Defendant.)

17 Plaintiff's first of several arguments for reversal of the underlying step-four
18 denial of benefits is that the Administrative Law Judge improperly discounted the opinions
19 of three treating sources. *See* Pl.'s Mem. at 12-13. In her September 23, 2003 opinion –
20 a date nearly seven years after Plaintiff's last insured date – the Administrative Law Judge
21 first summarized in some detail various evidence supporting a non-disability finding (albeit
22 with some limitations), including the assessments of consultative examiners and a medical
23 expert. *See* Administrative Record (AR) 20-23. Next, she explained as follows why she
24 found the opinions cited by Plaintiff to be unpersuasive:
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26 There are numerous other functional assessments
27 expressing greater exertional and nonexertional limitations
28 submitted by Dr. Rice, Dr. Feldman, Dr. Hutton, Dr. Sasaki and

1 Dr. Skenderian. With the exception of Dr. Rice, none of these
2 medical sources examined and/or treated the claimant until
3 [after] the [December 31, 1996] expiration of her insured status.
4 Their assessments do not relate to that [insured] period.
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6 AR 23. The Court pauses at this point – for the Administrative Law Judge’s explanation
7 continues with regard to Dr. Rice, as noted below – to determine whether applicable law
8 and substantial evidence support the post-DLI-based rejection of the opinions of
9 Drs. Sasaki and Skenderian. (Plaintiff does not discuss two of these doctors, Drs. Feldman
10 and Hutton, in this action.)

11 Although some *discounting* of post-DLI opinions can be proper, such opinions
12 generally may not be rejected altogether absent a sound explanation based on substantial
13 evidence. “The rule in this circuit, as in most circuits, is that ‘reports containing
14 observations made after the period for disability are relevant to assess the claimant’s
15 disability.’” *Smith v. Bowen*, 849 F.2d 1222, 1225 (9th Cir. 1988), *citing Kemp v.*
16 *Weinberger*, 522 F.2d 967, 969 (9th Cir. 1975). When it is necessary to draw medical
17 inferences from post-DLI evidence as to the onset date of disability, the Administrative
18 Law Judge must consult a medical expert for guidance. *See Armstrong v. Commissioner*,
19 160 F.3d 587, 590 (9th Cir. 1998) (interpreting SSR 83-20); *Quarles v. Barnhart*, 178
20 F. Supp. 2d 1089, 1096-97 (N.D. Cal. 2001) (explaining that the rationale for SSR 83-20’s
21 medical-expert mandate is that some disabilities, although diagnosed later, may have had
22 an earlier onset).

23 Here, the Administrative Law Judge’s pithy explanation for her rejection of
24 the post-DLI opinions of Drs. Sasaki and Skenderian was that those doctors did not first
25 see Plaintiff until after her DLI and that “[t]heir assessments do not relate to that [pre-DLI]
26 period.” AR 24; *see also* AR 21 (mentioning start dates of treatment by Drs. Sasaki and
27 Skenderian). Perhaps so, but the Administrative Law Judge does not explain how she
28 reached this conclusion. It is thus impossible for the Court to differentiate between, on the

1 one hand, (1) a sound rejection of the two doctors' post-DLI opinions based on the nature
2 and progress of the ailments involved and the sort of examinations conducted; and, on the
3 other hand, (2) a rejection of the opinions based solely on their post-DLI dates, in violation
4 of *Smith v. Bowen*. Although the Administrative Law Judge's opinion incorporated a prior
5 opinion from 1999, the 1999 opinion likewise does not include any further explanation for
6 discounting or rejecting the post-DLI opinions of Drs. Sasaki and Skendarian. *See* AR 22
7 (incorporation, in current opinion, of 1999 opinion); AR 96-105 (1999 opinion); *see*
8 *also* AR 156-200 (1999 hearing testimony of medical expert Dr. Cable), AR 183-86 (cross
9 examination of Dr. Cable in 1999 hearing about Dr. Sasaki's post-DLI pain treatments).
10 Defendant advances some reasons why the rejection of those opinions is substantively
11 sound, but the Court need not and does not address them because it may look only to the
12 grounds articulated in the underlying administrative opinion, not to the Commissioner's
13 *post hoc* defenses of that opinion. *See Ceguerra v. Secretary of Health & Human Services*,
14 933 F.2d 735, 738 (9th Cir. 1991). Remand is required to rectify this.

15 The Court expresses no view on the remainder of Plaintiff's first argument or
16 her other arguments for reversal. On remand, however, Defendant may wish to take those
17 arguments into consideration.

18 For the foregoing reasons, the decision of the Commissioner is reversed and
19 the matter is remanded for further proceedings consistent with this Opinion.

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21 DATED: April 16, 2007

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25 RALPH ZAREFSKY
26 UNITED STATES MAGISTRATE JUDGE
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